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BOARD OF ADJUSTMENT STAFF REPORT CONDITIONAL USE PERMIT

Staff Report

Date: December 15, 2025
To: Planning and Zoning Commission
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Conditional Use Permit – Vacation Home Establishment

APPLICANT(S): Optima LLC

PURPOSE: Application for CUP – Vacation Home Establishment

ADDRESS: 388 Main Street

LEGAL DESCRIPTION: The North ½ of Lot 13 and all of Lot 14 in Block 3, Fountain City Addition to the City of Deadwood.

FILE STATUS: All legal obligations have been completed.

ZONE: CH – Commercial Highway

STAFF FINDINGS:

Surrounding Zoning:

North: CH – Commercial Highway
South: CH – Commercial Highway
East: CH – Commercial Highway
West: R1 – Residential

Surrounding Land Uses:

Businesses
Highway
Businesses
Residences

SUMMARY OF REQUEST

The applicants have submitted a request for a Conditional Use Permit to operate a Vacation Home Establishment located at 388 Main Street. For several years, 388 Main Street has been utilized as a Vacation Home Establishment. This property is under new ownership and is requesting to continue operating in the same capacity for this particular property.

FACTUAL INFORMATION

1. The property is currently zoned CH – Commercial Highway.
2. The property has been operating as a Vacation Home Establishment for several years.
3. The subject property has access from Highway 14A with off-street parking for six (6) vehicles on site. Additional parking will be available in the adjacent parking lot at Cadillac Jack's Gaming Resort.
4. The subject property is located within a CH – Commercial Highway zoning location on 3 sides, and an R1 – Residential zoning on one side.
5. The property is not located within a flood zone.
6. Adequate public facilities are available to serve the property.
7. The area is characterized by businesses and highway with residences located behind the property.

STAFF DISCUSSION

The applicants have submitted a request for a Conditional Use Permit for a Vacation Home Establishment and City regulations permit Vacation Home Establishments in CH – Commercial Highway zoning districts with an approved Conditional Use Permit. The subject property has been operating as a Vacation Home establishment for several years. According to the application, there is adequate off-street parking and a driveway providing ingress/egress onto Highway 14A.

The Deadwood Zoning Code 17.08 and South Dakota Codified Law define a Vacation Home Establishment as the following:

“Vacation Home Establishment” means:

Any home, cabin, or similar building that is rented, leased, or furnished in its entirety to the public on a daily or weekly basis for more than 14 days in a calendar year and is not occupied by an owner or manager during the time of rental as defined and permitted by the State of South Dakota and this Title. This term does not include a Bed and Breakfast Establishment as defined in this Title.

1. Vacation Home Establishments are strictly prohibited in R1 and R2 zoning districts with the exceptions under 17.53.040;

In this instance the property is in a CH – Commercial Highway zoning district and is permitted with a Conditional Use Permit.

2. Vacation Home Establishments shall be located in upper floors of commercial structures only within the local historic district.

This property is not located in a traditional commercial structure nor is it within the local historic district. Therefore, first floor use is permissible.

COMPLIANCE:

1. The Zoning Office provided notice identifying the applicant, describing the project and its location, and giving the scheduled date of the public hearing in accordance with Section 11-4.
2. A sign was posted on the property for which the requests were filed.
3. Notice of the time and place was published in the designated newspaper of the City of Deadwood.

GENERAL USE STANDARDS FOR CONDITIONAL USE PERMITS:

In reviewing any application under the authority of this chapter and as a further guide to its decision upon the facts of the case, the Commission(s) shall consider, among other things, the following facts:

- A. The proposed use shall be in harmony with the general purposes, goals, objectives, and standards to the City Policy Plan, the ordinance, the district in which it is located, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice by the City of Deadwood.

The City Comprehensive Plan encourages a variety of uses and a mixture of housing types. Preserve the existing stock of historic structures by working with the individuals and guiding the uses is an acceptable means. Traffic and parking have not significantly affected the neighborhood. This area has a mixture of businesses and single-family dwellings.

B. Whether or not a community need exists for the proposed use at the proposed location in light of existing and proposed uses of a similar nature in the area and of the need to provide or maintain a proper mix of uses both within the city and also within the immediate area of the proposed use: (a) the proposed use in the proposed location shall not result in either a detrimental over concentration of a particular use from previously permitted uses within the city or within the immediate area of the proposed use.

The subject area is zoned CH – Commercial Highway and is intended to provide locations for commercial uses, which require access to roads and highways, and substantial amounts of parking. The proposed use will not result in a detrimental concentration of Vacation Home Establishments.

C. The proposed use at this location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvement, public sites, or rights-of-way.

If the applicant only uses off street parking and prevents any public nuisance issues that are often associated with Vacation Home Establishments, the proposed use may not result in a substantial or undue adverse effect on adjacent properties, or the character of the property and the use would not alter the character of the district. There will be no change in the size of the dwelling. To support a denial of a Conditional Use Permit on the grounds that it will cause increased traffic problems, there must be a high degree of probability that the increase would pose a substantial threat to the health and safety of the community. To date, the City has not received any complaints about the operation of this establishment.

D. Whether or not the proposed use increases the proliferation of non-conforming uses as well as previously approved Conditional Use Permits which are still in use, when influenced by matters pertaining to the public health, safety, and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of the Policy Plan, this ordinance, or any other plan, program, map or ordinance adopted, or under consideration pursuant to official notice, by the city or other governmental agency having jurisdiction to guide growth and development.

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For any conditional use, lot and performance standards shall be the same as similar type uses located in specific districts. The character and use of buildings and structures adjoining or near the property mentioned in the application shall be considered in their entirety.

The proposed use would not increase the proliferation of non-conforming uses. The appearance of the structure will not change; therefore, the character and use of the buildings and structures adjoining the subject property will not be adversely affected.

E. Whether or not the proposed use in the proposed area will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, and services specified in city ordinance. Where any such improvements, facilities, utilities or services are not available or adequate to service the proposed use in the proposed location, the applicant, as part of the application and as a condition to approval of the proposed Conditional Use Permit, is responsible for establishing ability, willingness and binding commitment to provide such improvements, facilities, utilities and services in sufficient time and in a manner consistent with the policy plan, this title, and other plans, programs, maps and ordinances adopted by the city to guide its growth and development. The approval of the Conditional Use Permit shall be conditioned upon such improvements, facilities, utilities, and services being provided and guaranteed by the applicant as described in Section 17.04.110.

The proposed use will not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services. Existing services are available onsite.

CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:

- A. Conditional Use Permits granted by this chapter shall be temporary in nature, with the exception of townhouses, condominiums and multi-family dwellings, and shall be granted to a designated person who resides at a residential address. They are not transferable from person to person or from address to address.
- B. Following the issuance of a Conditional Use Permit pursuant to the provisions of this ordinance, such permit may be amended, varied, or altered only pursuant to the standards and procedures established by this section for its original approval.
- C. Conditional Use Permits, once granted, can be revoked by the Board of Adjustment for cause after a hearing is held before them. Complaints seeking

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the revocation of such permit shall be filled with the Zoning Administrator and may be initiated by the Planning and Zoning Commission OR any three (3) residents within three hundred (300) feet of the property lines of which the application has been filed. All such revocation hearings shall be conducted in the same manner as for the Conditional Use Permit application hearings.

- D. The Planning and Zoning Commission shall have the authority to review Conditional Use Permits at any time and/or on an annual basis and place additional stipulations to mitigate a problem.
- E. To defray the administration costs of processing requests for Conditional Use Permits, a fee has been set by resolution of the City Commission and such information is available at the Planning and Zoning Office.
- F. Any use permitted under the terms of any Conditional Use Permit shall be established and conducted in conformity with the terms of such permit and of any conditions designated therewith.
- G. If the use permitted under the terms of a Conditional Use Permit has not been started within six (6) months of the date of issuance thereof, said permit shall expire and be canceled by the City Planning Department. Written notice thereof shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new Conditional Use Permit has been obtained.
- H. If the use permitted under the terms of a Conditional Use Permit ceases, for whatever reason, for a period of twelve (12) months, said permit shall expire and be canceled by the City Planning Department. Written notice thereof shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new Conditional Use Permit has been obtained.
- I. Upon receipt in proper form of the application and other requested material, the Board of Adjustment shall hold at least one (1) public hearing in a location to be prescribed by the Board of Adjustment and shall make a decision upon the proposal to grant or deny the Conditional Use Permit. At least ten (10) days in advance of each hearing, notice of the time and place of such hearing shall be published in the official newspaper of the city. Notice shall be posted on the property for which the Application for Conditional Use Permit has been filed.

If approved for a Conditional Use Permit, staff recommend the following stipulation(s):

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1. The Conditional Use Permit runs with the applicant and not the land; therefore, should the property be sold, the Conditional Use Permit is null and void.
2. Proof of a state sales tax number shall be provided to the Planning and Zoning Office for their files.
3. Building Inspector to inspect the building to ensure it meets applicable building codes.
4. Proper paperwork to be filed with the City of Deadwood Finance Office for Business Improvement District (BID) taxes.
5. City of Deadwood Business License required.
6. City of Deadwood Short-Term Rental License required.
7. Lodging License from the South Dakota Department of Health required.
8. All parking shall be off street.
9. Burn permits will not be issued for this location.

ACTION REQUIRED:

1. Approval/Denial by Deadwood Board of Adjustment (approved by Planning and Zoning Commission on November 19, 2025).